

consistent quotation requirements across markets.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove such proposed rule change, or
- (B) Institute proceedings to determine whether the proposed rule change should be disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2011-023 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2011-023. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's

Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR-FINRA-2011-023 and should be submitted on or before June 2, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Elizabeth M. Murphy,**  
*Secretary.*

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**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-64421; File No. SR-NYSEAmex-2011-32]

### **Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing of Proposed Rule Change Amending Rule 80C—NYSE Amex Equities To Include Additional Securities in the Pilot by Which Such Rule Operates and Amending Rule 104—NYSE Amex Equities To Simplify Certain Aspects of the Text While Also Conforming Certain of the Percentages Thereunder to the Proposed Changes to Rule 80C**

May 6, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 4, 2011, NYSE Amex LLC ("NYSE Amex" or the "Exchange") filed with the Securities and Exchange Commission

("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by NYSE Amex. The Commission is publishing this notice to solicit comments on the proposed rule change, from interested persons.

#### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend Rule 80C—NYSE Amex Equities to include additional securities in the pilot by which such rule operates and amend Rule 104—NYSE Amex Equities to simplify certain aspects of the text while also conforming certain of the percentages thereunder to the proposed changes to Rule 80C. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.com>.

#### **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

#### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

##### 1. Purpose

The Exchange proposes to amend Rule 80C to include additional securities in the pilot by which such rule operates and amend Rule 104 to simplify certain aspects of the text while also conforming certain of the percentages thereunder to the proposed changes to Rule 80C.

The Commission approved Rule 80C on a pilot basis on June 10, 2010 to provide for trading pauses in individual securities due to extraordinary market volatility ("Trading Pause") in all securities included within the S&P 500<sup>®</sup> Index ("S&P 500") ("Trading Pause Pilot" or "Pilot").<sup>3</sup> The Exchange noted in its

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The Commission approved the Trading Pause Pilot for all equities exchanges and FINRA. See Securities Exchange Act Release No. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (File Nos. SR-BATS-2010-014; SR-EDGA-2010-01; SR-

filing to adopt Rule 80C that during the Pilot period it would continue to assess whether additional securities need to be added and whether the parameters of Rule 80C would need to be modified to accommodate trading characteristics of different securities. The Exchange subsequently received approval to add to the Pilot the securities included in the Russell 1000® Index ("Russell 1000") as well as the Invesco PowerShares QQQ exchange-traded fund (symbol: QQQQ).<sup>4</sup>

The Exchange has continued to assess whether additional securities need to be added to the Pilot and whether the parameters of Rule 80C need to be modified to accommodate trading characteristics of different securities. In consultation with other markets and the staff of the Commission, the Exchange proposes to include all NMS stocks within the Pilot that are not already included therein, but to apply a wider Threshold Move percentage to the newly added securities. Accordingly, the Exchange proposes to delete Supplementary Material .10 to Rule 80C, as the text therein would no longer be necessary.

The Exchange proposes that the Threshold Move required to trigger a Trading Pause for the proposed new securities be 30% or more for such

securities priced at \$1 or higher and 50% or more for such securities priced less than \$1.<sup>5</sup> The Exchange believes that these percentages are commensurate with the characteristics shared by the proposed new securities within these price ranges and would promote the objectives of the Trading Pause Pilot to reduce the negative impacts of unanticipated price movements in a security. In particular, the proposed additional stocks are those not currently included in the S&P 500, Russell 1000, or specified ETPs, and therefore are more likely to be less liquid securities or securities with lower trading volumes. Accordingly, the Exchange believes that broader Threshold Move percentages would be appropriate. Similarly, because leveraged ETPs trade at a ratio against the associated index, a broader Threshold Move percentage would also be appropriate for leveraged ETPs. In addition, the Exchange believes that a 50% threshold move is appropriate for securities trading under a dollar to reflect that price movements of such lower-priced stocks equate to a higher percentage move than a similar price change would be for a higher-priced stock.

The Exchange proposes to include new subsections 80C(a)(i), (ii) and (iii) to reflect the distinction between the applicable Threshold Move percentages for current Pilot securities and the proposed new securities to be included within the Pilot.<sup>6</sup> The Exchange is not proposing any other changes to the text of Rule 80C or the operation of the Pilot, and will continue to assess whether the parameters for invoking a Trading Pause continue to be appropriate and whether the parameters should be modified.

The proposed changes to the Pilot, if approved, would require that the text of Rule 104(a)(1)(B)(iii) and (iv), which pertains to the pricing obligations that Designated Market Makers ("DMMs") are required to adhere to, be amended to correct the cross-references therein to Rule 80C and the Threshold Move thereunder. Specifically, the Exchange proposes to remove any text from Rule 104(a)(1)(B)(iii) and (iv) addressing NMS stocks that are not subject to the Pilot because no such securities would

exist and such text would therefore be unnecessary. The Exchange also proposes to simplify Rule 104(a)(1)(B)(iii) and (iv) by explicitly stating the percentages that are applicable thereunder and the times during the trading day when Rule 80C is not in effect. The Exchange notes that part of this proposed change would be substantive, in that the percentages under Rule 104(a)(1)(B)(iii) and (iv) would decrease slightly for the proposed new securities priced at \$1 or greater. The Exchange believes that this proposed substantive change would not have a significant impact on DMM pricing obligations and is reasonable because it would ensure that the designated quoting percentages in Rule 104(a)(1)(B) are within a narrower range than the percentages necessary to trigger a Trading Pause.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>8</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The proposed rule change also is designed to support the principles of Section 11A(a)(1)<sup>9</sup> of the Act in that it seeks to ensure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements because it expands the scope of the Pilot to cover all NMS stocks while adjusting the parameters of the rule for different securities in a manner that will promote uniformity across markets concerning decisions to pause trading in a security when there are significant price movements. Additionally, the proposed changes would ensure that the designated quoting percentages in Rule 104(a)(1)(B) are within a narrower range than the percentages necessary to trigger a Trading Pause.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not

EDGX-2010-01; SR-BX-2010-037; SR-ISE-2010-48; SR-NYSE-2010-39; SR-NYSEAmex-2010-46; SR-NYSEArca-2010-41; SR-NASDAQ-2010-061; SR-CHX-2010-10; SR-NSX-2010-05; and SR-CBOE-2010-047) and Securities Exchange Act Release No. 62251 (June 10, 2010), 75 FR 34183 (June 16, 2010) (SR-FINRA-2010-025). The Exchange submitted a proposed rule change shortly after the initial Commission approval order to clarify the procedures applicable to reopening. See Securities Exchange Act Release No. 62883 (June 11, 2010), 75 FR 34501 (June 17, 2010) (SR-NYSEAmex-2010-56).

<sup>4</sup> The Commission approved the addition to the Trading Pause Pilot of the securities included in the Russell 1000 and a specified list of Exchange Traded Products ("ETPs"), where applicable, for all equities exchanges and FINRA. See Securities Exchange Act Release No. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (File Nos. SR-BATS-2010-018; SR-BX-2010-044; SR-CBOE-2010-065; SR-CHX-2010-14; SR-EDGA-2010-05; SR-EDGX-2010-05; SR-ISE-2010-66; SR-NASDAQ-2010-079; SR-NYSE-2010-49; SR-NYSEAmex-2010-63; SR-NYSEArca-2010-61; and SR-NSX-2010-08 and Securities Exchange Act Release No. 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (SR-FINRA-2010-033). The Exchange submitted a proposed rule change shortly after the addition of the Russell 1000 securities and QQQQ to extend the operation of the Pilot, which was set to expire on December 10, 2010, until April 11, 2011. See Securities Exchange Act Release No. 63501 (December 9, 2010), 75 FR 78307 (December 15, 2010) (SR-NYSEAmex-2010-117). The Pilot is currently set to expire on the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies. See Securities Exchange Act Release No. 64206 (April 6, 2011), 76 FR 20418 (April 12, 2011) (SR-NYSEAmex-2011-23).

<sup>5</sup> Under the proposed rule change, the price of a security would be based on the closing price on the previous trading day, or, if no closing price exists, the last sale reported to the Consolidated Tape on the previous trading day.

<sup>6</sup> The Exchange is not proposing a change to the Threshold Move percentage applicable to securities currently included within the current Pilot. However, the changes proposed herein would require that certain rule text pertaining to the Threshold Move for the existing Pilot securities be reorganized within Rule 80C.

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78k-1(a)(1).

necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove such proposed rule change, or
- (B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEAmex-2011-32 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEAmex-2011-32. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NYSE Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR-NYSEAmex-2011-32 and should be submitted on or before June 2, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Elizabeth M. Murphy,**  
*Secretary.*

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**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-64437; File No. SR-BX-2010-059]

**Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 Thereto To Create a Listing Market on the Exchange**

May 6, 2011.

On August 20, 2010, NASDAQ OMX BX, Inc. (the "Exchange" or "BX") filed with the Securities and Exchange Commission (the "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to create a listing market on the Exchange, called "The BX Venture Market" ("BX Venture Market"). The proposed rule change was published for comment in the **Federal Register** on September 8, 2010.<sup>3</sup> The Commission subsequently extended the time period in which to either approve

the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change, to December 7, 2010.<sup>4</sup> The Commission received three comments in response to the Notice.<sup>5</sup>

On December 6, 2010, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>6</sup> On December 7, 2010, the Commission instituted proceedings to determine whether to disapprove the proposed rule change, as modified by Amendment No. 1.<sup>7</sup> The Commission thereafter received eight comments on the proposal.<sup>8</sup> The Exchange submitted a response letter to the comments on February 17, 2011.<sup>9</sup> On March 3, 2011, the Commission issued a notice of designation of longer period for Commission action on proceedings to determine whether to disapprove the proposed rule change, as modified by Amendment No. 1.<sup>10</sup> On May 4, 2011, the Exchange submitted Amendment No. 2 to the proposed rule change, as described in Items I and II below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit

<sup>4</sup> See Securities Exchange Act Release No. 63105 (October 14, 2010), 75 FR 64772 (October 20, 2010).

<sup>5</sup> See Letters to Elizabeth M. Murphy, Secretary, Commission, from William F. Galvin, Secretary of the Commonwealth of Massachusetts, dated September 28, 2010 ("MSD Letter"); Michael R. Trocchio, Bingham McCutchen LLP, on behalf of Pink OTC Markets Inc., dated October 3, 2010 ("Pink OTC Markets Letter"); and Tom A. Alberg, Managing Director and Founder, Madrona Venture Group, dated December 1, 2010 ("Madrona Letter").

<sup>6</sup> See Securities Exchange Act Release No. 63597 (December 22, 2010), 75 FR 82098 (December 29, 2010).

<sup>7</sup> See Securities Exchange Act Release No. 63448 (December 7, 2010), 75 FR 77036 (December 10, 2010) ("Order Instituting Proceedings").

<sup>8</sup> See Letters to Elizabeth M. Murphy, Secretary, Commission, from James J. Angel, Ph.D., CFA, dated January 14, 2011 ("Angel Letter"); K. Richard B. Niehoff, Chairman and CEO, United States OTC Markets, Inc., dated January 20, 2011 ("Niehoff Letter"); Mark G. Heesen, President, National Venture Capital Association, dated January 21, 2011 ("NVCA Letter"); Alan F. Eisenberg, Executive Vice President, Emerging Companies and Business Development, Biotechnology Industry Organization, dated January 24, 2011 ("BIO Letter"); Michael R. Trocchio, Bingham McCutchen LLP, on behalf of OTC Markets Group Inc., dated January 24, 2011 ("OTC Markets Group Letter"); Rey Ramsey, President and CEO, TechNet, dated January 24, 2011 ("TechNet Letter"); William F. Galvin, Secretary of the Commonwealth of Massachusetts, dated January 26, 2011 ("MSD Letter II"); and James McCarthy, Co-Founder, the US Venture Exchange, dated April 19, 2011 ("McCarthy Letter").

<sup>9</sup> See Letter to Elizabeth M. Murphy, Secretary, Commission, from Joan C. Conley, Senior Vice President and Corporate Secretary, The NASDAQ OMX Group, dated February 17, 2011 ("BX Response Letter").

<sup>10</sup> See Securities Exchange Act Release No. 64028 (March 3, 2011), 76 FR 13010 (March 9, 2011).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>15</sup> U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 62818 (September 1, 2010), 75 FR 54665 ("Notice").